

Gorham House, Inc. d/b/a Gorham House and Maine State Employees Association, Service Employees International Union, Local 1989. Case 1-CA-38372

December 28, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS
LIEBMAN AND HURTGEN

Pursuant to a charge filed on August 14, 2000, and an amended charge filed September 25, 2000, the General Counsel of the National Labor Relations Board issued a complaint on October 11, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 1-RC-20984. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On November 3, 2000, the General Counsel filed a Motion for Summary Judgment. On November 6, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's inclusion of charge nurses in the appropriate unit in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).¹

We also find there are no factual issues warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent admits, that the Union requested the following information from the

Respondent by letter of July 28, 2000, and again by letter of September 14, 2000:²

1. A list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period, and any records of discipline;
2. A copy of all current company policies which concern or relate to wages, hours, and working conditions;
3. A copy of all company fringe benefit plans (including the plan document and summary plan description) including pension, profit sharing, severance, stock incentive, vacation, training, legal services, child care or any other plans which relate to the employees; and
4. Copies of all current job descriptions.

It is well established that the foregoing type of compensation and employment information sought by the Union is presumptively relevant for purposes of collective bargaining and must be furnished on request unless its relevance is rebutted.³ The Respondent has not attempted to rebut the relevance of the information requested by the Union. Instead, in its answer, the Respondent relies solely on its challenge to the Union's certification as the basis for its denial that it has a duty to provide the Union with the requested information. We, therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment, and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Gorham House, Inc. d/b/a Gorham House, a corporation, with an office and a place of business in Gorham, Maine, has been engaged in the operation of a nursing home. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, purchased and re-

¹ Member Hurtgen did not participate in the underlying representation proceeding. He finds, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding.

² In its answer, the Respondent failed to address pars. 12(c) and 13(c) of the complaint, alleging that the Respondent has failed and refused to furnish the Union with the requested information. Therefore, in accordance with Sec. 102.20 of the Board's Rules, we deem these complaint allegations to be admitted to be true.

³ See, e.g., *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1077).

ceived at its Gorham facility goods valued in excess of \$5000 directly from points outside the State of Maine. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.⁴

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held May 20, 1999, the Union was certified on July 26, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time, regular part-time, and per diem occupational therapists, social workers, registered nurses (RNs), licensed practical nurses, Lincoln Care managers/RNs, charge nurses, certified nursing assistants, personal care attendants, certified medications technicians, activities coordinators, transportation coordinators, transportation assistants, cooks, lead cooks, dietary aides, wait staff, staffing coordinator, receptionists, maintenance employees, housekeeping and laundry employees, data entry employees, and child care teachers, but excluding all other employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since July 28, 2000, the Union has requested the Respondent to bargain and to furnish information, and, since July 28, 2000, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after July 28, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

⁴ The Respondent's answer states that it is without sufficient information to form a belief as to the truth of the complaint allegation that the Union is a labor organization under Sec. 2(5) of the Act, and so denies this allegation. This denial, however, does not raise an issue warranting a hearing. The Regional Director found in his Decision and Direction of Election that the Union is a labor organization, and the Respondent did not challenge this finding in the underlying representation hearing.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Gorham House, Inc. d/b/a Gorham House, Gorham, Maine, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Maine State Employees Association, Service Employees International Union, Local 1989, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a). On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time, regular part-time, and per diem occupational therapists, social workers, registered nurses (RNs), licensed practical nurses, Lincoln Care managers/RNs, charge nurses, certified nursing assistants, personal care attendants, certified medications technicians, activities coordinators, transportation coordinators, transportation assistants, cooks, lead cooks, dietary aides, wait staff, staffing coordinator, receptionists, maintenance employees, housekeeping and laundry employees, data entry employees, and child care teach-

ers, but excluding all other employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the following information it requested on July 28, 2000: (1) a list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period, and any records of discipline; (2) a copy of all current company policies which concern or relate to wages, hours, and working conditions; (3) A copy of all company fringe benefit plans (including the plan document and summary plan description) including pension, profit sharing, severance, stock incentive, vacation, training, legal services, child care, or any other plans which relate to the employees; and (4) copies of all current job descriptions.

(c) Within 14 days after service by the Region, post at its facility in Gorham, Maine, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 1 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 28, 2000.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

⁵ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Maine State Employees Association, Service Employees International Union, Local 1989, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time, regular part-time, and per diem occupational therapists, social workers, registered nurses (RNs), licensed practical nurses, Lincoln Care managers/RNs, charge nurses, certified nursing assistants, personal care attendants, certified medications technicians, activities coordinators, transportation coordinators, transportation assistants, cooks, lead cooks, dietary aides, wait staff, staffing coordinator, receptionists, maintenance employees, housekeeping and laundry employees, data entry employees, and child care teachers, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the following information it requested on July 28, 2000: (1) a list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period, and any records of discipline; (2) a copy of all current company policies which concern or relate to wages, hours, and working conditions; (3) A copy of all company fringe benefit plans (including the plan document and summary plan description) including pension, profit sharing, severance, stock incentive, vacation, training, legal services, child care or any other plans which relate to the employees; and (4) copies of all current job descriptions.

GORHAM HOUSE, INC.